IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO. 58 OF 1996.

Shri S.M.P. Mahambre,
r/o Mulgao, Assanora. ... Appellant.

Versus

The Goa State Co-operative
Bank Ltd., through its
Chairman, Panaji. ... Respondent.

Mr. J.P. Mulgaonkar, Advocate for the Appellant.

Mr. A.V. Nigalye, Advocate for the Respondent.

Coram : S.A. BOBDE, J.

Date : 24th June 2004.

ORAL JUDGMENT.

This is the plaintiff's appeal against the Judgment of the trial Court. At the time of hearing, the appeal is restricted to the extent that the trial Court has not granted Rs. 75,000/- by way of damages against future earnings and Rs. 25,000/- against mental agony and pain, eventhough the trial Court has granted a declaration that the termination is illegal and granted loss of salary to the extent of Rs. 49,500/- as claimed. The parties are referred to in the same status as before the trial Court. The plaintiff, who was initially appointed as a clerk, was last working as a Development Officer in the defendant Bank. In May 1979 the post of Development Officer was abolished and the plaintiff was transferred as an Agent to the Diu Branch of the Bank. He claimed that the post was abolished because he refused to accommodate the wishes of certain

members, who constituted the Board of Directors, specially one of them, who was an M.L.A..

2. Since the plaintiff refused to join the services at the place of transfer, a charge-sheet was issued. Thereafter an inquiry was held and the plaintiff was given an opportunity to improve himself on terms and conditions set out in a letter, dated 3rd October 1981 instead of dismissing him from service. The plaintiff did not agree to the terms and conditions of the Bank. As a result, his services were terminated with effect from 1st December 1981. The plaintiff, therefore, issued a notice claiming wrongful termination, salary and allowances from 1st January 1980 to 31st December 1981 to the extent of Rs. 49,118/- and certain other expenses, that is, from the date of his transfer to the end of the month of termination.

3. The trial Court framed the following issues:-

> "1. Whether the plaintiff proves that the various settlements vis-a-vis the Union and the Management also constitutes the terms and conditions of service of the employees of the defendant.
>
> 2. Whether the plaintiff proves that the post of Development Officer was abolished by the defendant because the plaintiff refused to accommodate the wishes of the Board of Directors especially that of one Shri S. Marathe who wanted loans to be granted to certain defaulting societies and

that he was thereafter transferred to Diu as an Agent?

3. Whether the plaintiff proves that the termination of his services was illegal, null and void based on findings which were perverse and the person who terminated his service had no authority in law?

4. Whether the plaintiff proves that he is entitled for reinstatement with back wages from 1.1.1980 till reinstatement and/or for damages equivalent to the salary drawn by the the plaintiff as also for damages, for mental anguish amounting to Rs. 1,50,000/- alongwith interest @ 18% p.a.?

5. Whether the plaintiff proves that the Asst. Manager had no authority in law to serve the charge-sheet on the plaintiff and as such the entire inquiry is vitiated?

6. Whether the plaintiff proves that Shri Modassir had ceased to be the Administrator since 12.5.1981 and that the order of dismissal of the plaintiff was passed on 16.11.1981. Hence illegal, null and void?

7. Whether the defendant proves that the suit is not maintainable in law as the Court has no jurisdiction as the prayers fall beyond the scope of this Court?

8. Whether the defendant proves that the plaintiff deliberately committed acts of indiscipline and insubordination and due to these acts his services were terminated?

9. Whether the defendant proves that the tenor of the plaintiff's letter dated 5.10.1981 showed that the plaintiff was no longer willing to submit to the order made by the defendant and that the plaintiff was not willing to abide by the officer.

10. Whether the defendant proves that the defendant abolished three posts of Development Officer as the same were

not necessary and not needed by the Bank for the business purpose and that two other Development Officers were also transferred as Agents alongwith the plaintiff on abolition of the said posts of Development Officer?

11. Whether the defendant proves that the plaintiff did not comply with the said transfer order and persistently indulged in the action of wilful insubordination and disobedience of the lawful orders of the defendant management and that the plaintiff remained continuously absent from duty, which amounted to wilful absence without proper leave and committed gross negligence in the discharge of the plaintiff's duties?

12. Whether the defendant prove that the suit is maintainable in law as the defendant did not challenge the verdict of the Enquiry Officer?

13. Whether the defendant proves that the suit is barred by law of limitation?"

and answered them as follows:-

"Issue no. 1 - Proved
Issue no. 2 - Proved
Issue no. 3 - Proved
Issue no. 4 - Partly Proved
Issue no. 5 - Proved
Issue no. 6 - Proved
Issue no. 7 - Not Proved
Issue no. 8 - Not Proved
Issue no. 9 - Not Proved
Issue no. 10 - Not Proved
Issue no. 11 - Not Proved
Issue no. 12 - Not Proved
Issue no. 13 - Not Proved."

In the result the trial Court decreed the suit with costs. The defendant was directed to pay to the plaintiff an amount of Rs. 49,500/- with interest at the rate of 18% per annum from the date of the suit till

full payment with costs. This sum appears to represent the amount claimed by him by way of salary for the aforesaid period.

4. The plaintiff has filed the present First Appeal against the denial of damages of Rs. 75,000/- against future earnings and Rs. 25,000/- for mental agony and pain.

5. Mr. Mulgaonkar, the learned counsel for the appellant, has submitted that the trial Court ought to have granted general damages. He, however, fairly accepted the want of pleadings or evidence in this regard. The prayer for general damages, therefore, cannot be considered.

6. The next contention on behalf of the appellant is that the plaintiff be allowed the sum of Rs. 75,000/- by way of damages against future earnings. This contention is rebutted by the learned counsel for the respondent, who has referred to the deposition of the plaintiff, who admitted that he did not make any attempt to mitigate the damages by trying to obtain an alternate employment during the last 7 years. In my view , therefore, such a plaintiff, who did not make an attempt to obtain any alternate employment, is not entitled to any damages by way of loss of future

earnings. Moreover, there is no evidence led by the plaintiff about his qualification and earning potentialities.

7. The next contention that the plaintiff should have been granted damages for mental agony and pain is also not sustainable since there appears to be no evidence of mental agony and paid suffered by the plaintiff. Such damages cannot be granted unless the plaintiff establishes the alleged suffering.

8. In the result, I find no merit in the Appeal which is, hereby, dismissed. There shall be no order as to costs.

(S.A. BOBDE)
JUDGE.

ed's.